IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 25.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.703 of 2006

Guhan ... Petitioner

Vs.

1.State of Tamil Nadu
rep.by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Greater Chennai,
Egmore, Chennai - 8. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the entire records leading to the detention of the petitionr namely Guhan, S/o Arumugam has been detained under Act 14/82 as a "Immoral Traffic Offender" vide detention order dated 17.06.2006 on the file of the second respondent herein, made in Memo No.152/BDFGISV/2006 quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Chennai.

For Petitioner : Mr.V.Parthiban,
for Mr.M.Rajavelu
For Respondents: Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner by name Guhan, who is detained as a ''Immoral Traffic Offender" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned

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detention order dated 17.06.2006, challenges the same in this Petition.

2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. Learned counsel for the petitioner, after taking us through the detention order, the grounds of detention and all other connected materials, has raised the following contentions.

i) The detention order is to be quashed on the ground of non-application of mind on the part of the detaining authority.

ii) Relied on documents were not supplied to the detenu.

Iii) The detaining authority has mentioned certain facts which were not supported by any material and hence the detention order has to be interfered with.

4. While elaborating the above contentions, with regard to the first contention, namely non-application of mind, the learned counsel for the petitioner has brought to our notice paragraph No.3 of the grounds of detention. He heavily relied on the following passage:

> "Later Tvl.Guhan, Prakash and Moorthy and the rescued girls were produced before the VI Metropolitan Magistrate, Egmore, Chennai and the Learned Magistrate remanded Tvl.Guhan, Prakash and Moorthy to judicial custody till 23.6.2006 and were lodged at Central Prison, Chennai as remand prisoners and the rescued girls Geetha and Nekha were sent to Government Home, Mylapore, Chennai. The investigation of the case is not yet over."

He also brought to our notice the special report of the sponsoring authority, which is available at page No.131 of the paper booklet. In paragraph No.2 of the said report, the sponsoring authority has stated that "மீட்கப்பட்ட பெண் கிதா கெல்லீஸ் அரசு உறாமிலும், நேகா மைலாப்பூர் அரசினர் மகளிர் காப்பகத்திலும் நீதிமன்ற உத்தரவுப்படி ஒப்படைக்கப்பட்டார்கள் ". Learned counsel for the petitioner submitted that though the sponsoring authority has specifically stated or informed the fact that among the two rescued girls, one by name Geetha was sent to the Government Home at Kellys and another girl by name Nekha was sent to the Government Home at Mylapore as per the orders of the Court, the detaining authority, without proper verification, has stated that both the rescued girls, namely Geetha and Nekha, were sent to the Government Home at Mylapore, Chennai. According to learned counsel for the petitioner, this is a clear case of mis-statement of facts and inasmuch as it clearly shows non-application of mind on the part of the detaining authority, there is no need to show the prejudice

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caused to the detenu. In support of the above contention, he relied on the judgments reported in 1993LW(Cri)578 [R.Sivalingam vs. State of Tamil Nadu] and 2004 MLJ (cri) 766 [Sekar alias Ottapalaym Sekar vs. The State of Tamil Nadu].

5. We verified the relevant averments in paragraph No.3 of the grounds of detention as well the contents of the special report filed by the sponsoring authority available at Page No.131 of the booklet. It is not in dispute that the detenu concerned is one Guhan. It is true that the police arrested and produced the said Guhan, Prakash, Moorthy and rescued the two girls and all of them were produced before the VI Metropolitan Magistrate, Chennai. It is also seen that on the orders of the learned Magistrate, the detenu- Guhan, Prakash and Moorthy were lodged at Central Prison, Chennai as remand prisoners and the rescued girls Geetha and Nekha were sent to the Government Home, Mylapore. It is not in dispute that we are very much concerned about the detenu, namely Guhan. Though both the girls were sent to the Government Home on the orders of the learned Magistrate, it is true that the reference made in respect of these two girls is contrary to the information furnished by the sponsoring authority. As rightly pointed out by the learned Additional Public Prosecutor, the statement/reference made about these two girls in paragraph No.3 is based on the special report dated 14.06.2006. In the same special report, in an earlier paragraph, namely paragraph No.1, the very same Officer- sponsoring authority has stated "மீட்கப்பட்ட பெண்கள் நேகா, கிதா இருவரையும் இரவு பாதுகாப்பிற்காக F/W 119 கஸ்தூரி, மு.நி.கா.14654 ரமணபாபு மூலம் மைலாப்பூர் உறாமில் வைத்தேன்", which clearly shows that immediately after rescuing both the girls, they were sent to the Government Home at Mylapore. In such circumstances, we are satisfied that the reference made in paragraph No.3 of the grounds of detention is not the innovation of the detaining authority but was culled from the statement of fact supplied by the sponsoring authority. We are of the view that on a combined reading of the entire grounds of detention and all the details furnished in the special report by the sponsoring authority, it cannot be claimed that the detaining authority has mis-stated/misquoted the statement of fact as stated by the sponsoring authority. In such circumstances and in view of the factual details available from the records, we are satisfied that the decisions relied on by the learned counsel for the petitioner will not be helpful to the case on hand. Further, as rightly pointed out, if the defect or discrepancy or mistake relates to the detenu then undoubtedly, it would affect the detention order passed. As pointed out earlier, the reference made to sending of the two rescued girls to a Government Home is not a vital material for detaining the detenu as an 'Immortal Traffic Offender'. It is seen from the materials placed that the detenu and the two others as well as the two girls were produced before the learned Magistrate and on the orders of the learned Magistrate, the detenu and the two others were sent to Central Prison, Chennai and the two girls were sent to the Government Home, Mylapore. In view of the same, we are satisfied

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that the detenu is in no way prejudiced, even if he accepts that there is an error in quoting the statement of fact, as claimed by the learned counsel for the petitioner. Accordingly, we reject the said contention.

6. Coming to the second contention namely, that the relied on documents were not supplied to the detenu, the learned counsel for the petitioner submitted that the remand order relating to the rescued girls was not placed and not furnished to the detenu.

7. As pointed out above, it is not in dispute that all the relevant materials relating to the detenu were placed before the detaining authority and supplied to the detenu. The order of the learned Magistrate sending the rescued girls to the Government Home for a certain period is not a relied on document for arriving at a subjective satisfaction. Even otherwise, a copy of the said order had been supplied to the detenu along with other documents, vide page No.114 of the booklet. Accordingly, we reject the said contention also.

8. Coming to the third and the last contention namely, that certain factual details are not supported by any material, the learned counsel for the petitioner relied on paragraph No.4 of the grounds of detention. By pointing out the information stated therein, the learned counsel for the petitioner contended that based on the special report dated 14.06.2006 of the sponsoring authority, the detaining authority has stated that the detenu-Guhan is in remand in Anti Vice Squad Police Station Cr.No.45 of 2006 and that he moved a bail application before the Principal Sessions Judge, Chennai in Crl.M.P.No.4075 of 2006 and that the same is still pending. Further, the detaining authority has stated that there is every likelihood of his coming out on bail in the above case, since in similar cases, bails are granted by the same Court or Higher Court. Learned counsel for the petitioner submitted that the detaining authority, though referred to this information in the special report dated 14.06.2006, failed to verify whether anything happened on 15.06.2006 or 16.06.2006 as regards the pendency of the bail application, since the detention order was passed only on 17.06.2006. Here again, we are unable to accept the said contention. It is true that the sponsoring authority submitted the special report containing all the details upto 14.06.2006 and the detaining authority has passed the impugned detention order on 17.06.2006. No doubt, between 14.06.2006 and 17.06.2006, there were two working days. Inasmuch as the sponsoring authority has not furnished further details after 14.06.2006, it is presumed that no further order has been passed by the Court concerned in respect of the bail application pending on 14.06.2006. Inasmuch as no additional information was furnished by the sponsoring authority, we are of the view that there is no need on the part of the detaining authority to verify the additional facts, if any, from the sponsoring authority. It is made clear that if the detaining

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authority had taken a longer time than a reasonable one, it is but proper on its part to get further information regarding the subsequent developments, if any. In view of the fact that within a period of two days the detaining authority has passed the impugned order of detention, we are unable to accept the contention raised by the learned counsel for the petitioner. Accordingly, we reject the said contention.

9. In the light of what is stated above, we do not find any valid ground for interference. Accordingly, this Habeas Corpus Petition is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

gms

To

1.The Secretary to Government, State of Tamil Nadu,
Prohibition and Excise Department, Fort St. George, Chennai-9.

2.The Commissioner of Police,
Greater Chennai, Egmore, Chennai - 8.

3. The Superintendent, Central Prison, Chennai.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+1cc to Mr.M.Rajavelu, Advocate Sr 45407

LA (CO)
km/12.10.

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